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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,822	10/30/2003	Kevin Maher	1666.1000	1293
23649	7590	03/22/2006	EXAMINER	
HANES & SCHUTZ, LLC 102 SOUTH TEJON ST. SUITE 800 COLORADO SPRINGS, CO 80903			THANH, QUANG D	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 03/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/696,822	MAHER, KEVIN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Quang D. Thanh	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 5,6 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of group I, claims 1-12, and more specifically of species 1, figs 1-3 in the reply filed on 02/23/2006 is acknowledged. As directed by applicant, claims 13-16 have been canceled. Accordingly claims 5-6 and 12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Thus, claims 1-4 and 7-11 are currently pending.

### ***Priority***

2. It is noted that this application appears to claim the benefit under 35 U.S.C. 119(e) of provisional application, Serial No. 60/439,269, filed on January **19** ?, 2003. Applicant's attention is directed to the filing date "January **19**, 2003", which appears to be inconsistent with PTO records. The correct date should be -- January 10, 2003 --. Appropriate correction is required.

### ***Specification***

3. The disclosure (p. 2, paragraph 1) is objected to because of the incorrect filing date of provisional application, Serial No. 60/439,269 as mentioned above. Correction is required. See MPEP § 608.01(b).

***Oath/Declaration***

4. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: incorrect filing date of provisional application, Serial No. 60/439,269 as mentioned above. The correct filing date should be – January 10, 2003 –

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-4 and 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Cozzi (4,359,045).

7. Re claims 1-4 and 8-11, Cozzi discloses an apparatus (fig. 1) for inclining of a support platform, thus capable of producing therapeutic vestibular stimulation in a patient, comprising: platform means 10 having opposing sides for supporting a human body (fig. 1-2), restraining means 42/44 (fig.3) attached to the platform means for securing the body to the platform (fig. 2), and means enabling rotation of the platform, including a pair of mutually parallel and coaxially disposed wheels 34/36 (fig. 1-2, col. 4,

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lines 14-34) respectively attached to the opposing sides of the platform 10, where the axis of the wheels defines a center of rotation of the platform; at least one shaft/axel means (metal rod, col. 4, lines 26-29) rotatably supporting the platform and having a longitudinal axis coaxial with the wheels; wherein the wheels include at least one circular disk 36 having a planar aspect and having a center, the plane of the disk is perpendicular to the longitudinal axis of the at least one supporting shaft and the center of the disk is coaxial with the longitudinal axis of the at least one supporting shaft (fig. 3, col. 4-lines 14-34); the platform means includes a chair having a back 21 and a seat 22 for supporting the human body in a sitting position (best seen in fig. 2), the opposing sides comprise the lateral sides 16 of the chair and where each respective one of the pair of circular disks is attached to the lateral sides of the chair (fig. 1).

8. Claims 1-4 and 8-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Hsien (6,679,818). Hsien discloses an apparatus for a body inversion thus capable of producing therapeutic vestibular stimulation in a patient, comprising: platform means 21 having opposing sides for supporting a human body (fig. 1), restraining means 31 attached to the platform means for securing the body to the platform (fig. 1), and means enabling rotation of the platform, including a pair of mutually parallel and coaxially disposed wheels 41 respectively attached to the opposing sides of the platform, where the axis of the wheels defines a center of rotation of the platform; at least one shaft/axial means (axial rod 44, col. 2, lines 24-29, fig. 1) rotatably supporting the

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platform and having a longitudinal axis coaxial with the wheels; wherein the wheels include at least one circular disk 42 having a planar aspect and having a center (fig. 2), the plane of the disk is perpendicular to the longitudinal axis of the at least one supporting shaft and the center of the disk is coaxial with the longitudinal axis of the at least one supporting shaft 44 (fig. 2); the platform means includes a chair 21 having a back 22 and a seat 23 for supporting the human body in a sitting position (fig. 1), the opposing sides comprise the lateral sides of the chair and where each respective one of the pair of circular disks 41 is attached to the lateral sides of the chair (fig. 1).

9. Claims 1-3 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Heisler et al. (3,152,802). Heisler discloses an apparatus having a rotatable platform (col. 1, lines 50-51) thus capable of producing therapeutic vestibular stimulation in a patient, comprising: platform means 30 having opposing sides for supporting a human body, restraining means 40/42/45 attached to the platform means for securing the body to the platform (fig. 1), and means enabling rotation of the platform, including a pair of mutually parallel and coaxially disposed wheels 17 (fig. 1) respectively attached to the opposing sides of the platform, where the axis of the wheels defines a center of rotation of the platform; at least one shaft/axial means 51 rotatably supporting the platform and having a longitudinal axis coaxial with the wheels (fig. 2); wherein the wheels include at least one circular disk 17 (fig. 2-3) having a planar aspect and having a center, the plane of the disk is perpendicular to the longitudinal axis of the at least one supporting

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shaft and the center of the disk is coaxial with the longitudinal axis of the at least one supporting shaft 51 (fig. 2-3).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cozzi in view of Schaeffer (6,821,288). Cozzi discloses the apparatus having all the claimed features including a bifurcated shoulder bands 44 (best seen fig. 3) and a lap belt 42 (fig. 3), except for a head restraining band, a chest restraining strap and leg restraining strap. However, Schaeffer teaches a movable therapy table that includes various straps such as a head restraining band, a chest restraining strap and leg restraining strap in order to stabilize the patient to the therapy table during use (fig. 1, col. 5, lines 34-36). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify Cozzi's apparatus, to include a head restraining band, a chest restraining strap and leg restraining strap as additional straps, as suggested and taught by Schaeffer, for the purpose of providing additional securing means in order to securely stabilize the patient to the apparatus during use (fig. 1, col. 5, lines 34-36).

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pal (CH 621701 A5) teaches an apparatus for rotation of a person. Edwards '623 teaches a circle swing. Gartner '708 teaches a health rest with a tiltable support.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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